IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE TWENTIETH DAY OF JANUARY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE P.S.NARAYANA

WRIT PETITION NO : 3555 of 1997

Between:

P.Yeram Naidu S/o Rajappadu
P.A.C.S.Arasavelli, Arasavelli Post,
Srikakulam.

..... PETITIONER

AND

1 The Deputy Co-operative Registrar,
Srikakulam, Gujarathipeta,
Srikakulam.
2 The District Co-operative Officer,
Srikakulam, Gujarathipeta,
Srikakulam.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue Writ order or directing more particularly in the nature of Writ of Mandamus declaring the surcharge orders of the 1st respondent in his proceedings R.c.No.882/94-B, dated 31/12/1996 for surcharging an amount Rs.9,692/- from the petitioner along with the interest which is illegal arbitrary, contrary, to Section 51 of the A.P.C.S. Act and violating Article 14 of the Constitution India and consequentially direct the respondent to provide all the necessary documents on which the authorities relied.

Counsel for the Petitioner: MR.S.SIVA PRASAD
Counsel for the Respondents : GP FOR COOPERATION

The Court made the following :

ORDER:

P.Yerram Naidu, writ petitioner, had moved this Court questioning the surcharge order issued by 1st respondent in proceedings Rc.No.882/94-B, dated 31-12-1996 for surcharging an amount of Rs.9,692/- from the petitioner along with interest which is illegal, arbitrary, contrary to Section 51 of the A.P. Co-operative Societies Act, 1964, hereinafter in short referred to as "Act" for the purpose of convenience, and violative of Article 14 of the Constitution of India and consequentially direct the respondents to provide all the necessary documents to the petitioner on which the authorities relied and to pass such other suitable orders.

Sri Siva Prasad, the learned Counsel representing the petitioner would contend that the report was not placed before the General Body as per Section 51 of the Act and the said provision being mandatory, the proceedings are liable to be quashed. The learned

Counsel also would submit that no doubt initially interim suspension was granted but subsequent thereto by virtue of modification the entire amount was directed to be deposited and the writ petitioner had already deposited the amount. The learned Counsel also would submit that though several representations were made for several of the documents, the relevant documents were not supplied nor proper and reasonable opportunity had been given to the writ petitioner and on the ground of violation of the principles of natural justice also, the writ petitioner is bound to succeed. The learned Counsel also had drawn the attention of this Court to the Judgment made by the Special Court wherein on the self-same charges acquittal had been recorded. The Counsel would point out that the charges being same, in view of the acquittal recorded by the Criminal Court, the surcharge proceedings cannot be sustained and are liable to be quashed. The learned Counsel also placed reliance on certain decisions in this regard.

On the contrary, the learned Government Pleader for Co-operation would contend that proper procedure had been complied with. The learned Government Pleader also would contend that placing the enquiry report before the General Body of the society is only for the purpose of intimation and the said provision cannot be said to be mandatory. The learned Government Pleader also would submit that the writ petitioner is entitled to alternative remedy and hence on this

ground also the writ petitioner is bound to fail.

Heard the Counsel.

The writ petitioner was appointed as a Paid Secretary in Primary Agricultural Co-operative Society, Arasavelli in the year 1978 by the then Cadre Committee. Subsequent thereto, the Government issued G.O.Ms.No.454 dated 13-9-1985 decategorising the societies basing on turnover of the business. The Secretaries were allotted to the decategorised societies basing on the qualifications, experience and option of societies by the Secretaries concerned and the powers are vested with the Registrar of Co-operative Societies for allotment of Secretaries to the societies. Subsequent thereto powers were delegated to the District Collector for allotment of the Secretaries. Accordingly, Secretaries were allotted to the decategorised societies as per the procedure contemplated in the Act and the petitioner was allotted to Arasavelli Primary Agricultural Co-operative Society by the then District Collector on 30-6-1990 and the petitioner joined in the above said Society on 1-8-1990. It is stated that the authorities inspected the society periodically and found that the President and Secretary of the society had committed several irregularities and the matter was brought to the notice of the higher authorities. The District Co-operative Officer ordered inspection under Section 52 of the Act. The Inspecting Officer detected several irregularities committed by the President while inspecting the records of the Society. The

President of the Society brought pressure on the authorities for changing of the Inspecting Officer. Subsequently the District Co-operative Officer appointed another Enquiry Officer at the instance of the ex-President of the Society. During enquiry the President made a false allegation to the Enquiry Officer and the higher authorities basing on the false allegation suspended the petitioner from service. It is further stated that the President of the Society borrowed loans from the Society and failed to pay the outstanding loan amounts within the time as prescribed in the Bye-Laws and the Rules under the Act and in order to avoid disqualification from the office of the President of the Society, he tampered the records and created false receipts forging the signatures of the writ petitioner. It is further stated that the President of the Society broke the almirah of the Society and tampered several records by forging the signatures of the petitioner and made false complaint against the petitioner. On the basis of the false complaint made by the President of the Society, the Enquiry Officer instructed the petitioner to attend the enquiry and sought clarification relating to the following allegations:

1. Retention of cash of Rs.6,645/- collected on 3-8-1992 and credited the same to the Cash Book on 3-10-1992.

2. The debit of insurance claim amount in the Cash Book without vouchers and forged vouchers amounting to Rs.4,570/-.

3. The cash balance relating to now credit cash book balance of Rs.31,640/-.

4. Unadvisable expenditure in connection with fertilizer business for Rs.12,998-50.

5. Irregular drawl of Bonus of Rs.1600/-.

In paras 6 to 10 of the affidavit filed in support of the Writ Petition, several factual details had been narrated relating to the allegations. It was further averred that the authorities declined to supply the necessary documents as required by the petitioner so as to enable him to give proper reply to the show cause notice. It is also stated that the petitioner made several representations on 10-10-1994, 24-10-1994, 1-11-1994 by registered post requesting the authorities to supply the following documents :

1. Enquiry report dt.30-6-1994.

2. Proceedings Rc.No.6084/93-C dated 26-11-1993 of the District Co-operative Officer, Srikakulam.

3. Petition filed by Smt.D.Bonamma and the statement recorded from her.

4. Copies of vouchers for Rs.4,570/- petition of the complainants and the statements recorded from the parties concerned with regard to the proposed surcharge amount of Rs.4,570/-.

5. Extract of cash balance contained in the manure Cash Book with regard to item-C for Rs.31,640/-.

6. Extracts of expenditure of Fertilizer account with regard to item-D of Rs.12,998-50 paise.

7. Extract of pay bill with regard to the payment of bonus item-C of Rs.1600/- and resolution copy of the management.

It is specifically stated that the authorities supplied only xerox copy of the enquiry report. Hence, it is stated that reasonable opportunity was not given to the writ petitioner. Further, specific stand was taken that the procedure under Section 51 of the Act had not been followed. Hence the relief specified supra had been prayed for.

In the counter affidavit filed, all the allegations were denied except the fact that authorities inspected the Society periodically and detected irregularities and ordered inspection under Section 52 of the Act and the Inspecting Officer detected some irregularities. It was further specifically averred that according to the findings of the Enquiry Officer one receipt for Rs.25,000/- was created by forging the signature of the Secretary by some one and it cannot be said that the President of the Society created false receipt to avoid disqualification for the post of President as seen from the enquiry report. It was further stated that the President of the Society was disqualified to hold the post of President for having committed default in payment of loan dues to the Society. The Enquiry report disclosed the following irregularities among others :

1. Retention of cash of Rs.6645/- collected on 3-8-1992 and credited the same to the cash box on 3-10-1992.

2. The debit of insurance claim amount in the cash book without vouchers and forged vouchers amounting to Rs.4570/-.

3. The cash balance relating to non-credit cash balance of Rs.31,640/-.

4. Unavoidable expenditure in connection with fertilizers business for Rs.12,998-50.

5. Irregular drawl of bonus of Rs.1600/-.

It was also specifically averred that criminal prosecution also was launched against the petitioner in Special Court, Vijayawada which is pending trial. Several other factual details narrated in the affidavit filed in support of the Writ Petition had been denied in the counter affidavit. At para 12 of the counter affidavit it was averred as hereunder :

> "With reference to para 14, it is respectfully submitted that it is a fact that the enquiry report along with the findings shall be placed before the next General body of the society. The above provision is obviously made to keep the members of the General Body of a cooperative Society informed of the facts and the outcome of the enquiry made into the affairs of the Society. It is not stated therein that only after such placement of the enquiry report and findings thereto before the General Body, further action on the findings of the enquiry officer should be taken.
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> It is however submitted that a copy of enquiry report was communicated to the society with the office letter Rc.No.882/94-B, dt.2-11-96 with advice to call for a General meeting and place the enquiry report before General Body, but the Society failed to conduct the General Body meeting for the purpose till 31-12-96. Therefore, the surcharge orders were thus passed on 31-12-1996."

However specific stand was taken that enquiry was conducted after giving reasonable opportunity to the petitioner. It was also stated that

the petitioner is having alternative remedy under Section 76(1) of the Act by filing an Appeal before the A.P. Co-operative Tribunal, Vijayawada and hence the Writ Petition is liable to be dismissed.

Interim suspension was granted on 28-2-1997 which had been made absolute subject to the condition of the petitioner depositing the entire amount of surcharge as per the impugned order dated 31-12-1996 in two instalments, and it is stated that the same had been complied with. It is also brought to the notice of this Court that the Special Court at Vijayawada recorded acquittal in C.C.No.11/97 relating to which specific reference was made even in the counter affidavit filed by the respondents.

Section 51 of the Act dealing with **Inquiry** reads as hereunder :

> "The Registrar may, of his own motion and shall, on the application of a society to which the society concerned is affiliated, or of not less than one-third of the members of the committee, or of not less than one-fifth of the total number of members of the society, hold an inquiry or direct some person authorized by him by an order in this behalf to hold an inquiry into the constitution, working and financial condition of a society. Such inquiry shall be completed within a period of four months from the date of commencement of the enquiry and the report of enquiry along with the findings of the Registrar thereon shall be placed before the next general meeting of the society:
>
> Provided that the Registrar may, for reasons to be recorded in writing extend the period aforesaid for a further period not exceeding two months".

The words ".....the report of enquiry along with the findings of the

Registrar thereon shall be placed before the next general meeting of the society….." would assume some importance. Submissions at length were made by both the Counsel, the Counsel for writ petitioner contending that in the light of the language employed in the said provision the same is mandatory and the learned Government Pleader for Co-operation contending that it is only with a view to give intimation to the General Body and nothing more and hence the same may have to be construed as directory and on that ground the proceedings would not be vitiated. A similar question in a slightly different context had fallen for consideration in W.P.No.6175/88 before this Court wherein it was held that unless the report is placed before the General Body meeting of the Society, no further steps are to be taken in this regard under the provisions of the Act. A Division Bench of this Court in **V.MANI APPARAO AND OTHERS Vs. CO-OPERATIVE TRIBUNAL-AUTHORITY-CUM-PRINCIPAL DISTRICT MUNSIF, GUDIVADA AND OTHERS (**W.P.No.8604/89 dated 16-11-1994) following the Judgment dated 18-8-1988 in W.A.Nos.1103/88 and 1104/88 held that inasmuch as without any enquiry, which is a condition precedent under Section 60 of the Act, the surcharge was levied on the petitioners, the Writ Petition is allowed and the order passed by the 2nd respondent in R.C.No.3620/85-D dated 18-10-1986 as affirmed by the 1st respondent/Co-operative Tribunal-Authority-cum-Principal District Munsif, Gudivada in C.M.A.No.5/87

dated 7-6-1989 is set aside and the matter is remanded to the 2nd respondent, the Deputy Registrar of Co-operative Societies, Gudivada, to conduct an enquiry after issuing notice and reasonable opportunity to the petitioners and pass appropriate orders in accordance with law. I n **K.VENKATARAMAN Vs. THE DEPUTY REGISTRAR OF COOP. SOCIETIES, THANJAVUR AND OTHERS** while dealing with providing of reasonable opportunity and principles of natural justice under Tamil Nadu Co-operative Societies Act it was held at para-4 as hereunder :

> "Section 65 of the Act contemplates an enquiry into the affairs of the Society. When an enquiry takes place under that section, it would reveal the loss sustained by the Society. In order to fix the individual liability to surcharge, Section 71 will have to be resorted to by the departmental officials. Whether a further enquiry under Section 71 will have to be conducted or not is not a point which calls for my decision in view of my following finding about the violation of the principles of natural justice. In the instant case, a show cause notice was issued. No doubt, in reply to that notice, the petitioner contended that statements obtained behind his back should not be used against him without his being given an opportunity to question the correctness of that statement. Nevertheless, it is conceded by the learned Counsel appearing for the department that those *ex parte* statements were used against the petitioner when passing ultimately the order of surcharge. Undoubtedly if a liability is sought to be fastened to the petitioner on the basis of certain statements, he should be given an opportunity to cross-examine those witnesses. But no such opportunity was ever afforded to the petitioner. Merely because the petitioner did not specify the documents which he wanted to peruse, it will not mean that it will cure the failure to afford an opportunity. So also, the fact that he had a remedy by way of appeal to the Co-operative Tribunal is no substitute for not affording an opportunity since the same handicap which was prevailing before the original authority would continue to prevail. In this connection, a reference may be made usefully to the decision of a bench of this Court in *Soundaram v. Entertainment Tax*

Officer (1969(2) MLJ 6). The head note of the said decision reads thus :

> "The materials collected by the Department behind the back of the assessee may well be used by the Department to initiate proceedings, but cannot be used, in such proceedings, to the prejudice of the assessee unless he has been given a proper and reasonable opportunity of answering such materials. The assessee can do so only if he was fully informed of the materials which the Department proposed to use against him, and given a reasonable time to think out his defence and make his objections. Therefore, it has to be held that there was infraction of natural justice."

No doubt certain submissions were made relating to the recording of acquittal by the Special Court at Vijayawada in C.C.No.11/97. It is no doubt true that it is a subsequent event. Be that as it may, the fact remains that the report of the enquiry along with the findings had not been placed before the General Body meeting of the Society. Apart from this aspect of the matter, the writ petitioner had taken a specific stand and also had pointed out that in the representations made by him, specific requests were made for furnishing of copies of certain relevant documents and the same had not been furnished except a xerox copy of the enquiry report and the stand taken by the writ petitioner in this regard had not been specifically denied. Hence this Court is of the opinion that reasonable opportunity was not given to the writ petitioner and the same is in violation of the principles of natural justice. It is no doubt true that certain contentions had been advanced that there is an alternative remedy of Appeal available, but this Court is not inclined to accept the same for the reason that

inasmuch as proceedings are not in accordance with Section 51 of the Act and also the same being in violation of the principles of natural justice, this Court is not inclined to drive the writ petitioner to invoke the remedy by way of Appeal in the light of the legal flaw referred to supra, the writ petitioner is bound to succeed, but however liberty is given to the respondents to further proceed with the matter afresh in accordance with law. It is also made clear that till then, inasmuch as it is said the amount had been already deposited, status-quo as on today to be maintained until further action to be taken by the respondents in this regard is finalized in accordance with law.

Accordingly, the Writ Petition is hereby allowed to the extent indicated above giving opportunity to the respondents to proceed in accordance with law afresh keeping in view the views expressed by this Court supra. No order as to costs.

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P.S.Narayana.,J

Date : -1-2005

L.R. copy to be marked : YES / No

AM

That Rule Nisi has been made absolute as above.

Witness the Hon'ble Sri Devinder Gupta, the Chief Justice on this Twentieth day of January Two Thousand And Five.

ASSISTANT REGISTRAR

To:

One fair copy to the Hon'ble Sri Justice P.S. Narayana (for his Lordship's kind perusal)

1 **The Deputy Co-operative Registrar,**
Srikakulam, Gujarathipeta,
Srikakulam.
2 **The District Co-operative Officer,**
Srikakulam, Gujarathipeta,
Srikakulam.

3. 2 C.Cs. to Government Pleader for Co-operation

High Court Buildings,

High Court of A.P.

Hyderabad. (OUT)

4. 2 C.D. copies

5. 8 L.R. copies

6. The Under Secretary, Union of India, Ministry of Law, Justice and Company

Affairs, New Delhi.

7. The Secretary, A.P. Advocates Association Library, High Court Buildings,

Hyderabad.